

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 467 Department of Agriculture and Consumer Services

**SPONSOR(S):** Raburn

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 498

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee		Thompson	Smith
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

The bill contains modifications to several agricultural, consumer service, and licensing activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (Department).

Relating to agriculture and consumer services, the bill in part:

- Specifies a method for submitting agriculture education and promotion facility applications;
- Removes an outdated rulemaking reference adopting the Federal Worker Protection standards;
- Revises provisions related to cattle marks and brands;
- Applies marketing order certification filing requirements to the Division of Fruit and Vegetables;
- Authorizes the Department to enforce the Florida Building Code regarding all Florida Forest Service facilities;
- Clarifies that the sale of aquaculture products is not restricted to producers;
- Exempts dealers in agricultural products who pay by credit card from certain regulations;
- Removes the five year expiration period for the Do Not Call list; and
- Allows the Department to penalize or suspend a household mover for failure to maintain motor vehicle insurance.

Relating to licensing of Private Investigative, Private Security, and Repossession Services, the bill in part:

- Allows a manager of a private investigative agency to manage multiple locations;
- Exempts certain partners and corporate officers from fingerprint retention requirements;
- Revises certification document requirements for Class "K" licenses;
- Authorizes access to the mental competency data to assist in firearms licensure;
- Requires a licensee to notify his or her employer if arrested, and provides grounds for disciplinary action;
- Revises notification requirements of partners, officers, and employees of private investigative, security, and recovery agencies;
- Requires Class "G" licensees to successfully complete training for each type and caliber of firearm carried while on duty;
- Allows for the automatic suspension of specified licenses of licensees arrested or formally charged with certain crimes; and
- Revises private investigator and security officer training requirements.

The bill revises and/or eliminates certain licensing and renewal provisions resulting in an estimated Department loss in revenue of \$318,939 for fiscal year 2017-2018; and a savings in Department expenditures of \$252,363 for the same fiscal year. See Fiscal Analysis & Economic Impact Statement section for discussion.

The effective date of the bill is July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0467.APR

DATE: 3/3/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The mission of the Department is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.

The Division of Consumer Services, within the Department, is the state's clearinghouse for consumer complaints, information and protection, including operating Florida's Do Not Call List. Various businesses, such as Pawnbrokers, Health Studios, Sellers of Travel, Professional Surveyors and Mappers, and Telemarketing, are regulated by the Division of Consumer Services. Additionally, the Division of Consumer Services regulates standards for gasoline, brake fluid, antifreeze, liquefied petroleum gas, amusement rides, household moving services, and weighing and measuring devices.<sup>1</sup>

The Division of Licensing, within the Department, issues professional licenses to persons providing private security, private investigative and recovery services to the public pursuant to ch. 493, F.S. In 2017, the Division of Licensing regulated a total of approximately 1.6 million private security, private investigative, and recovery services licenses in the state of Florida.<sup>2</sup>

The bill includes modifications to several agricultural, consumer services, and licensing activities under the Department's jurisdiction. Each portion of this analysis is divided by subject and followed by a listing of the applicable sections of the bill.

#### **CHAPTER 493, F.S. - PRIVATE INVESTIGATIVE, PRIVATE SECURITY, AND REPOSSESSION SERVICES (Sections 3-17)**

##### ***Manager of Private Investigative Agency (Section 3)***

###### Present Situation

Section 493.6101(13), F.S., defines a "manager" as any licensee who directs the activities of licensees at any agency or branch office. The law requires the manager to be assigned to, and primarily operate from, the agency or branch office location for which he or she has been designated as manager.<sup>3</sup>

###### Effect of Proposed Changes

The bill adds that a manager of a private investigative agency may manage multiple private investigative agencies and branch offices. According to the Department, this change considers

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<sup>1</sup> The Department of Agriculture and Consumer Services, Division of Consumer Services website available here: <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services> (last viewed February 7, 2017).

<sup>2</sup> The Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type As of January 31, 2017*, available at: [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf), (last visited February 14, 2017).

<sup>3</sup> s. 493.6101(13), F.S.

advancements in technology that allow an individual to manage multiple locations, and will eliminate multiple licenses and fees without harm to the public.<sup>4</sup>

### ***Fingerprint Retention Exemption (Section 4)***

#### **Present Situation**

Current law requires each individual, partner, or principal officer in a corporation seeking licensure under ch. 493, F.S., to file with the Department a complete initial application and submit, among other things, a full set of fingerprints, a fingerprint processing fee, and a fingerprint retention fee.<sup>5</sup> The fees include the cost of retaining the fingerprints in the statewide automated biometric identification system established in s. 943.05(2)(b), F.S., and the cost of enrolling the fingerprints in the national retained print arrest notification program as required under s. 493.6108, F.S.<sup>6</sup>

While many agency partners and corporate officers carry individual ch. 493, F.S., licenses and, therefore, are already required to submit their fingerprints, participate, and pay the ongoing cost, associated with enrollment in fingerprint retention, some partners and corporate officers do not hold licensure by the Department.

#### **Effect of Proposed Changes**

The bill provides that partners and corporate officers who do not possess licenses subject to renewal under s. 493.6113, F.S., are exempt from the fingerprint retention requirements of the statewide automated biometric identification system established in s. 943.05(2)(b), F.S. and the ongoing costs associated with enrolling and retaining their fingerprints in the national retained print arrest notification program required under s. 493.6108, F.S.

### ***Firearms Instructor Documentation (Section 4 continued)***

#### **Present Situation**

Current law requires that in addition to the application, photograph, requisite fees and a full set of fingerprints, an applicant for a Class “K” license (firearms instructor license)<sup>7</sup> must provide proof of firearm training. Specifically, the law requires firearms instructors to submit one of the following:

- The Florida Criminal Justice Standards and Training Commission Instructor Certificate<sup>8</sup> and written confirmation by the commission that the applicant possesses an active firearms certification.
- The National Rifle Association Private Security Firearm (NRA) Instructor Certificate.<sup>9</sup>
- A firearms instructor certificate issued by a federal law enforcement agency.<sup>10</sup>

This existing language does not set forth time parameters for these certifications, which allows potential for an applicant to submit certification documents that are less than recent.

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<sup>4</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 3 (Feb. 8, 2017).

<sup>5</sup> s. 493.6105(3)(j), F.S.

<sup>6</sup> Id.

<sup>7</sup> s. 493.6101(14), F.S., defines “firearm instructor” as any Class “K” licensee who provides classroom or range instruction to applicants for a Class “G” statewide firearm license.

<sup>8</sup> Information regarding the Criminal Justice Standards & Training Commission Certificate can be found on the Florida Department of Law Enforcement Criminal Justice Standards & Training Commission (CJSTC) webpage, available here:

<http://www.fdle.state.fl.us/cms/CJSTC/Commission/CJSTC-Home.aspx> (last viewed February 8, 2017).

<sup>9</sup> Information regarding the National Rifle Association Instructor Development Schools can be found on the NRA Instructor Development Schools webpage, available here: <http://le.nra.org/training/instructor-development-schools.aspx#schedule> (last viewed February 8, 2017).

<sup>10</sup> s. 493.6105(6), F.S.

## Effect of Proposed Changes

The bill provides that both the NRA and federal firearm training certificates must be valid and issued not more than three years before the submission of the applicant's firearms instructor application.

### ***Investigation of Applicants - Mental Competency Data Access (Section 6)***

#### Present Situation

Current law requires the Department to investigate an applicant for a ch. 493, F.S., private investigative, private security, and repossession service license before it may issue the license.<sup>11</sup> A component of the investigation requires a mental health inquiry to determine whether the applicant has been adjudicated incompetent under ch. 744, F.S., the Florida Guardianship Law, or has been committed to a mental institution under ch. 394, F.S., the Florida mental health law.<sup>12</sup>

The Department of Law Enforcement maintains the Mental Competency (MECOM) database for the purposes of listing persons who are prohibited from purchasing a firearm.<sup>13</sup> MECOM contains information submitted by county clerks of court, including court records of adjudications of mental defectiveness or commitments to mental institutions.<sup>14</sup>

Currently, the Department is able to access this information for the purpose of issuing or retaining a concealed weapon license under ch. 790, F.S.<sup>15</sup> However, the Department does not have the authority to access MECOM to review the mental health or substance abuse records of ch. 493, F.S., private investigative, private security, and repossession service applicants. Consequently, the only method available to confirm the existence of an adjudication of incapacity or a commitment is through an applicant's certification in their license application.<sup>16</sup>

#### Effect of Proposed Changes

The bill allows the Department, notwithstanding s. 790.065(2)(a)4.f., F.S.,<sup>17</sup> to receive MECOM data of individuals who are prohibited from purchasing a firearm, for the purposes of determining eligibility of applicants and licensees under ch. 493, F.S. This would help prevent such licensure of individuals who have been adjudicated incompetent under ch. 744, F.S., or committed to a mental institution under ch. 394, F.S., unless competency has been judicially restored.

### ***Arrest Notification (Parts of Sections 6 and 10)***

#### Present Situation

Current law does not require ch. 493, F.S., private investigative, private security, and repossession services licensees to notify their employer if they have been arrested. Conversely, the law requires the Department to provide this information to the employer.<sup>18</sup> Specifically, the law provides that when the

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<sup>11</sup> s. 493.6108, F.S.

<sup>12</sup> s. 493.6108(1)(b), F.S.

<sup>13</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 4 (Feb. 8, 2017).

<sup>14</sup> s. 790.065(2)(a)4.c.(I), F.S., requires clerks of court to provide FDLE with names and identifying information of individuals committed under chapters 394, 397, or 744, F.S.

<sup>15</sup> s. 790.065 (2)(a)4.f., F.S., authorizes FDLE to provide the Department with mental health and substance abuse data of individuals who are prohibited from purchasing a firearm for the purposes of determining eligibility of applicants and licensees under ch. 790, F.S.

<sup>16</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 4 (Feb. 8, 2017).

<sup>17</sup> s. 790.065 (2)(a)4.f., F.S., authorizes FDLE to provide the Department with mental health and substance abuse data of individuals who are prohibited from purchasing a firearm for the purposes of determining eligibility of applicants and licensees under ch. 790, F.S.

<sup>18</sup> s. 493.6108(5), F.S.

Department receives information about an arrest within the state of a person who holds a valid license issued under ch. 493, F.S., for a crime that could potentially disqualify the person from holding such license, the Department must provide the arrest information to the agency that employs the licensee.<sup>19</sup>

### Effect of Proposed Changes

The bill requires a person licensed under ch. 493, F.S., to notify his or her employer within three calendar days if he or she is arrested for any offense. The bill also includes failure of any licensee to notify his or her employer within 3 calendar days if arrested for any offense as grounds for disciplinary action.<sup>20</sup>

### **Agency Notification Requirements (Section 7)**

#### Present Situation

Current law provides requirements for private security, investigative, and recovery agencies, or schools to follow when notifying the Department of changes of partners, officers, or employees.<sup>21</sup>

Specifically, the law requires the agencies or schools to do the following:

- After filing the application, unless the Department declines to issue the license or revokes it after issuance, an agency or school must, within five working days of the withdrawal, removal, replacement, or addition of any or all partners or officers, notify and file with the Department complete applications for such individuals (the agency's or school's good standing under this chapter are contingent upon the Department's approval of any new partner or officer);<sup>22</sup> and
- Each agency or school must, upon the employment or termination of employment of a licensee, report such employment or termination immediately to the Department and, in the case of a termination, report the reason or reasons (the report must be on a form prescribed by the Department).<sup>23</sup>

#### Effect of Proposed Changes

The bill removes the term "schools" from the requirements that must be followed when notifying the Department of changes of partners, officers, or employees; and replaces the requirement that an agency or school report the employment or termination of employment of a licensee *immediately*, to instead be *within 15 calendar days*.

According to the Department, the current law seemingly requires security officer training schools to submit applications for corporate officers. However, the schools do not currently submit applications for officers or add/remove officers. Security officer training school requirements are outlined in s. 493.6304, F.S., separate and apart from agency filing requirements. This change corrects potentially conflicting statutory requirements.<sup>24</sup>

In addition, the bill revises the requirement that the agency or school report the employment or termination of employment of a licensee in a form prescribed by the Department, to instead be submitted electronically in a manner prescribed by the Department.

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<sup>19</sup> Id.

<sup>20</sup> Per s. 493.6118(2), F.S., disciplinary action taken by the Department may include(s): denying an application for the issuance or renewal of a license; issue a reprimand; impose an administrative fine in the Class I category pursuant to s. 570.971, F.S., for every county or separate offense, or place the licensee on probation for a period of time and subject to such conditions as the Department may specify.

<sup>21</sup> s. 493.6112, F.S.

<sup>22</sup> s. 493.6112(1), F.S.

<sup>23</sup> s. 493.6112(2), F.S.

<sup>24</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 5 (Feb. 8, 2017).

## ***Renewal Applications (Section 8)***

### **Present Situation**

Current law requires that an applicant for renewal of a Class “G”, statewide firearm license, submit proof that he or she has received, during each year of the license period, a minimum of four hours of firearms recertification training taught by a firearms instructor licensee and has complied with such other health and training requirements that the Department must adopt by rule.<sup>25</sup> Proof of completion of firearms recertification training must be submitted to the Department upon completion of the training.<sup>26</sup>

Presently, the training requirement does not specify a type and caliber of firearm.

### **Effect of Proposed Changes**

The bill requires a Class “G” licensee successfully complete requalification training for each type and caliber of firearm carried in the course of performing his or her regulated duties.

The bill also replaces the term “recertification” with “requalification.” According to the Department, this nomenclature is used by the industry and reflected in Department rulemaking.<sup>27</sup>

## ***Temporary Class “G” Licensure (Section 9)***

### **Present Situation**

Current law authorizes the Department to issue a Class “G” temporary firearm license, on a case-by-case basis, if the agency or employer of the applicant has certified that the applicant has been determined to be mentally and emotionally stable. Determinations are made by one of the following methods:

- A validated written psychological test taken within the previous 12-month period;
- An evaluation by a psychiatrist or psychologist licensed in this state or by the Federal Government made within the previous 12-month period; or
- The presentation of a DD form 214, issued within the previous 12-month period, which establishes the absence of emotional or mental instability at the time of discharge from military service.<sup>28</sup>

The Department of Law Enforcement maintains the Mental Competency (MECOM) database for the purposes of listing persons who are prohibited from purchasing a firearm.<sup>29</sup> MECOM contains information submitted by county clerks of court, including court records of adjudications of mental defectiveness or commitments to mental institutions.<sup>30</sup>

Currently, the Department is able to access this information for the purpose of issuing or retaining a concealed weapon license under ch. 790, F.S.<sup>31</sup> However, the Department does not have authority to access MECOM to review the mental health or substance abuse records of ch. 493, F.S., private investigative, private security, and repossession service applicants.

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<sup>25</sup> s. 493.6113(3)(b), F.S.

<sup>26</sup> Id.

<sup>27</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 5 (Feb. 8, 2017).

<sup>28</sup> s. 493.6115(12), F.S.

<sup>29</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 4 (Feb. 8, 2017).

<sup>30</sup> s. 790.065(2)(a)4.c.(I), F.S., requires clerks of court to provide FDLE with names and identifying information of individuals committed under chapters 394, 397, or 744, F.S.

<sup>31</sup> s. 790.065 (2)(a)4.f., F.S., authorizes FDLE to provide the Department with mental health and substance abuse data of individuals who are prohibited from purchasing a firearm for the purposes of determining eligibility of applicants and licensees under ch. 790, F.S.

## Effect of Proposed Changes

The bill allows the Department to review MECOM data of individuals applying for a temporary Class “G” license to determine that the applicant is not prohibited from licensure based upon the data.

This section also corrects a cross-reference in s. 493.6115(4), F.S., regarding the conditions under which a Class “G” licensee may carry a concealed weapon.

## ***Grounds for Disciplinary Action - Automatic License Suspension (Part of Section 10)***

### Present Situation

Current law enumerates the grounds under which a licensee under ch. 493, F.S., may be subject to disciplinary action by the Department.<sup>32</sup> The Administrative Procedure Act (APA) specifies the procedures for such agency actions,<sup>33</sup> including requirements for when an agency deems its actions necessary to protect the public, but not of an imminent emergency nature.<sup>34</sup> In addition, the APA specifies the procedures to follow if an agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license.<sup>35</sup>

Thus, if the Department determines that the arrest of a ch. 493, F.S., licensee constitutes an immediate danger to the public health, safety, or welfare, the Department follows the emergency suspension procedures established in the APA.<sup>36</sup> This requires an agency to proceed to a suspension or revocation hearing pursuant to ss. 120.569 and 120.57, F.S., after the issuance of the emergency suspension order. However, according to the Department, this particular requirement is problematic because to proceed with administrative action based on a licensee’s arrest during the pendency of criminal proceedings can result in an administrative hearing being held before or during a criminal trial.<sup>37</sup> The Department indicates that both prosecutors and defense attorneys are extremely reluctant to allow witnesses to be deposed and testify at an administrative hearing before a criminal trial takes place as the same facts will be used to prove both cases.

Currently, the Department of Financial Services is mandated, upon receipt of information or an indictment, to immediately temporarily suspend the licenses of bail bond agents and insurance agents when the licensees have been charged with certain crimes.<sup>38</sup> Along with these temporary suspension orders, the licensees are notified of their right to challenge the action by requesting a hearing pursuant to ss. 120.569 and 120.57, F.S.

## Effect of Proposed Changes

Similar to the authority provided to the Department of Financial Services, the bill allows the Department to automatically suspend a Class “G” or “K” license until resolution of the criminal proceeding if the licensee was arrested or charged with a firearms related crime. The Department states that the automatic suspension is necessary due to serious concerns in allowing a person subject to the Department’s regulatory authority to continue to carry a firearm for employment when the licensee was arrested or charged with a crime related to possession and/or use of a firearm.<sup>39</sup>

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<sup>32</sup> s. 493.6118, F.S.

<sup>33</sup> s. 120.60(5) and (6), F.S.

<sup>34</sup> s. 120.60(5), F.S.

<sup>35</sup> s. 120.60(6), F.S.

<sup>36</sup> s. 120.60(6), F.S.

<sup>37</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 6 (Feb. 8, 2017).

<sup>38</sup> ss. 648.45(1) and 626.611(2), F.S.

<sup>39</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 6 (Feb. 8, 2017).

The bill also allows the Department to automatically suspend any ch. 493, F.S., license until resolution of the criminal proceeding, if the licensee was arrested for a forcible felony.<sup>40</sup>

### ***License Fees (Sections 5, 11, 13 and 16)***

#### **Present Situation**

General licensing requirements in statute provide that Class "A," Class "B," Class "AB," Class "K," Class "R," and branch agency licenses are valid<sup>41</sup> and renewable<sup>42</sup> for a period of three years. However, the fees for these licenses are currently listed under statutes that contain the term "biennial" in the section heading. This inconsistency was recently pointed out to the Department by the Joint Administrative Procedures Committee (JAPC).<sup>43</sup>

#### **Effect of Proposed Changes**

The bill corrects inconsistencies of triennial licenses being listed under a heading of biennial by removing the term *biennial* from the licensing fee statute headings of ss. 493.6107, 493.6202, 493.6302, and 493.6402, F.S.

### ***License/Training Requirements (Sections 12, 14, 15, and 17)***

#### **Present Situation**

The below sections of statute contain obsolete effective dates and/or provisions requiring training to be provided in two parts:

#### **Section 493.6203(5), F.S.**

*Effective January 1, 2008*, an applicant for a Class "MA," (private investigative agency manager), Class "M," (manager Class "AB" agency), or Class "C" (private investigator) license must pass an examination that covers the provisions of ch. 493, F.S., and is administered by the Department or by a provider approved by the Department.

#### **Section 493.6203(6)(b), F.S.**

*Effective January 1, 2012*, before submission of an application to the Department, the applicant for a Class "CC" (private investigator intern) license must have completed a minimum of 40 hours of professional training pertaining to general investigative techniques and ch. 493, F.S., which course is offered by a state university or by a school, community college, college, or university under the purview of the Department of Education, and the applicant must pass an examination.

The training must be provided in two parts, one 24-hour course and one 16-hour course.

#### **Section 493.6203(6)(c), F.S.**

An individual who submits an application for a private investigator intern license beginning September 1, 2008, through December 31, 2011, who has not completed the 16-hour course to submit proof of successful completion of the course within 180 days after the date the application is submitted. If documentation of completion of the required training is not submitted by that date, the individual's license is automatically suspended until proof of the required training is submitted to the Department.

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<sup>40</sup> s. 776.08, F.S., defines "forcible felony" as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>41</sup> s. 493.6111(2), F.S.

<sup>42</sup> s. 493.6113(1), F.S.

<sup>43</sup> Joint Administrative Procedures Committee letter to the Department of Agriculture and Consumer Services Division of Licensing, December 20, 2016.



**Section 493.6303(4)(a), F.S.**

*Effective January 1, 2012*, an applicant for a Class "D" (security officer) license must submit proof of successful completion of a minimum of 40 hours of professional training at a school or training facility licensed by the Department.

The training must be provided in two parts, one 24-hour course and one 16-hour course.

**Section 493.6303(4)(b), F.S.**

An individual who submits an application for a security officer license beginning January 1, 2007 through December 31, 2011, who has not completed the 16-hour course to submit proof of successful completion of the course within 180 days after the date the application is submitted. If documentation of completion of the required training is not submitted by that date, the individual's license is automatically suspended until proof of the required training is submitted to the Department. A person licensed before January 1, 2007 is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect at the time he or she was licensed applies.

**Section 493.6403(2), F.S.**

*Beginning October 1, 1994*, an applicant for a Class "E" (recovery agent) or a Class "EE" (recovery agent intern) license to have completed a minimum of 40 hours of professional training at a school or training facility licensed by the Department.

**Effect of Proposed Changes**

The bill removes the obsolete effective dates and/or provisions outlined above.

The bill removes the requirements in each respective provision that the training be provided in two parts. According to the Department, whether the courses are taught in two parts or one does not affect the training received by an applicant.<sup>44</sup>

The bill requires applicants for a recovery agent or a recovery agent intern license to submit proof of their *successful completion* of the 40 hour training requirement.

The bill revises the provision that references security officer school and training requirements as "outlined" in s. 493.6303(4), F.S., to instead reference this training as "specified" in s. 493.6303(4), F.S.

**CONSUMER SERVICES (Sections 18 and 19)*****Telephone Solicitation (Section 18)*****Present Situation**

The federal Telephone Consumer Protection Act provides for restrictions on unsolicited advertisement to a telephone.<sup>45</sup> The state mirrors this provision statutorily<sup>46</sup> and requires the Department to maintain the state's Do Not Call list,<sup>47</sup> also known as the "no sales solicitation calls" list.<sup>48</sup> A "telephonic sales call" is defined as a telephone call or text message to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or

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<sup>44</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 7 (Feb. 8, 2017).

<sup>45</sup> 47 U.S.C. s. 227.

<sup>46</sup> s. 501.059, F.S.

<sup>47</sup> Information regarding the Do Not Call list can be found at the Florida Department of Agriculture and Consumer Services, *Florida DO NOT CALL Program* webpage, available at: <https://www.fldnc.com/About.aspx> (last viewed February 9, 2017).

<sup>48</sup> s. 501.059(3), F.S.

obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.<sup>49</sup>

Residents who do not wish to receive sales calls may have their residential, mobile, or telephonic paging device telephone number included on this list by the Department for a period of five years.<sup>50</sup> After the five years has expired, the person's subscription expires.

### Effect of Proposed Changes

The bill removes the five year subscription expiration period, allowing subscribers to remain on the list until they choose otherwise. This change will mirror the federal Telephone Consumer Protection Act which currently has no expiration.

## ***Household Moving Services (Section 19)***

### Present Situation

Current law requires any person engaged in intrastate household moving services to register with the Department.<sup>51</sup> The law governs the loading, unloading, transportation or shipment, and affiliated storage of household goods by movers and applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods. The law is intended to secure the satisfaction and confidence of shippers and members of the public when using a mover.<sup>52</sup>

A certificate of liability insurance coverage must be provided by the mover showing proof of proper coverage, issued by a company authorized to transact business in this state. The Department shall be named as a certificate holder and must be notified at least 10 days before cancellation of insurance coverage.<sup>53</sup> The insurance coverage must at a minimum include:

- Liability insurance coverage for the loss or damage of household goods as a result of the negligence of the mover in an amount of not less than \$10,000 per shipment.
  - In lieu of the required liability insurance coverage, a mover operating two or fewer trucks is authorized, and a moving broker is required, to file a performance bond or certificate of deposit in the amount of \$25,000 with the Department designating the Department as the sole beneficiary.<sup>54</sup>
- Motor vehicle coverage, including bodily injury and property damage liability coverage in the following minimum amounts:
  - \$50,000 per occurrence for a commercial motor vehicle with a gross weight of less than 35,000 pounds;
  - \$100,000 per occurrence for a commercial motor vehicle with a gross weight of more than 35,000 pounds, but less than 44,000 pounds; and
  - \$300,000 per occurrence for a commercial motor vehicle with a gross weight of 44,000 pounds or more.<sup>55</sup>

A mover's failure to maintain liability insurance coverage constitutes an immediate threat to the public health, safety, and welfare.<sup>56</sup> If a mover fails to maintain insurance coverage, the Department is authorized to impose the following penalties:

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<sup>49</sup> s. 501.059(1)(g), F.S.

<sup>50</sup> s. 501.059(3), F.S.

<sup>51</sup> ch. 507, F.S.

<sup>52</sup> s. 507.02, F.S.

<sup>53</sup> s. 507.04, F.S.

<sup>54</sup> s. 507.04(1), F.S.

<sup>55</sup> s. 507.04(2), F.S.

<sup>56</sup> s. 507.04(1)(a)2., F.S.

- Immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state;<sup>57</sup> and
- Notwithstanding the availability of any administrative relief pursuant to ch. 120, F.S., seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies, a civil penalty not to exceed \$5,000, and court costs.<sup>58</sup>

This provision only applies to liability insurance coverage requirements. As a result, the Department does not appear to have the authority to impose these penalties if a mover fails to maintain motor vehicle coverage.

#### Effect of Proposed Changes

The bill authorizes the Department to impose the penalties that are currently authorized for failure to maintain liability insurance, on household movers who fail to maintain the required motor vehicle insurance.

### **AGRICULTURE (Sections 1, 2, 20, 21, 22, 23, 24, 25, and 26)**

#### ***Agriculture Education and Promotion Facilities (Section 1)***

##### Present Situation

The Department is required to serve as the state agency for screening and certifying applicants as a qualified agriculture education and promotion facility.<sup>59</sup> An "agriculture education and promotion facility" is defined as an exhibition hall, arena, civic center, exposition center, or other capital project or facility which can be used for exhibitions, demonstrations, trade shows, classrooms, civic events, and other purposes that promote agriculture, horticulture, livestock, equestrian, and other resources of the state and educate the residents as to these resources.<sup>60</sup> The Department is required to adopt rules pursuant to ss. 120.536(1), and 120.54, F.S., for the receipt and processing of applications for funding of projects pursuant to this section.

Applications must be submitted by October 1 of each year.<sup>61</sup> Current law does not prescribe a method for the applications to be submitted.

##### Effect of Proposed Changes

The bill requires agriculture education and promotion facility applications to be *postmarked or electronically* submitted by October 1 of each year.

#### ***Enforcement of Federal Worker Protection Regulations (Section 2)***

##### Present Situation

The Environmental Protection Agency (EPA) Agricultural Worker Protection Standard (WPS) is a federal regulation aimed at reducing the risk of pesticide poisoning and injury among agricultural workers and pesticide handlers.<sup>62</sup> The EPA Labeling Requirements for Pesticides and Devices reviews pesticide product labels as part of the licensing and registration process for pesticides.<sup>63</sup> The label on a

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> s. 288.1175, F.S.

<sup>60</sup> s. 288.1175(3), F.S.

<sup>61</sup> s. 288.1175(8), F.S.

<sup>62</sup> 40 C.F.R. Part 140.

<sup>63</sup> 40 C.F.R. s. 156.10.

pesticide package or container and the accompanying instructions are a key part of pesticide regulation.<sup>64</sup> The label provides information about how to handle and safely use the pesticide product and avoid harm to human health and the environment.<sup>65</sup>

Chapter 487, F.S., is the Florida law that governs pesticide regulation and safety. This chapter is made up of the Florida Pesticide Law, which regulates the distribution, sale, and use of pesticides and the Florida Agricultural Worker Safety Act, which ensures that agricultural workers employed in the state receive protection from agricultural pesticides. The Department is the primary agency responsible for administering these laws and the Federal Worker Protection Standard, which was adopted by the Department in rule during the 1995-1996 fiscal year.<sup>66</sup>

### Effect of Proposed Changes

The bill removes the outdated reference to the 1995-1996 fiscal year in which the Department adopted the EPA regulations.

### ***Livestock Marks and Brands (Sections 20, 21, and 22)***

#### Present Situation

Current law requires any livestock owner who uses a mark or brand to identify their livestock to register the mark or brand by applying to the Department and paying a \$10 fee for each mark or brand.<sup>67</sup> Among other application requirements, the application must be made on a form prescribed by the Department and must be accompanied by a facsimile of the brand applied for.<sup>68</sup>

Registration of a mark or brand entitles the registrant to exclusive ownership and use of the mark or brand for a five year period.<sup>69</sup> Marks or brands may be renewed for successive five year periods upon application and payment of a \$5 renewal fee.<sup>70</sup>

Relating to the transfer of ownership of cattle, current law requires all purchasers of cattle, except for immediate slaughter, to remark or rebrand the same within 10 days or have on request a bill of sale from the rightful owner of marks and brands on cattle.<sup>71</sup> This requirement does not apply where an entire stock of cattle with the mark and brand or marks and brands carried by them is to be sold and conveyed.<sup>72</sup> The Department currently does not regulate transfer of ownership of cattle, and very few cattle owners rebrand purchased cattle.<sup>73</sup>

### Effect of Proposed Changes

#### ***Recording of Marks and Brands (Section 20)***

The bill revises the requirement that an application be accompanied by a *facsimile* of the brand applied for, and instead allows a *detailed drawing* of the brand. According to the Department, this revision would update the statute to allow alternative methods to be offered to receive brand applications, such as e-mail of the application.<sup>74</sup>

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<sup>64</sup> United States Environmental Protection Agency, Pesticide Registration, Labeling Requirements webpage, available at: <https://www.epa.gov/pesticide-registration/labeling-requirements> (last viewed February 7, 2017).

<sup>65</sup> Id.

<sup>66</sup> s. 487.2041, F.S.

<sup>67</sup> s. 534.021, F.S.

<sup>68</sup> Id.

<sup>69</sup> s. 534.041, F.S.

<sup>70</sup> Id.

<sup>71</sup> s. 534.061, F.S.

<sup>72</sup> Id.

<sup>73</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 9 (Feb. 8, 2017).

<sup>74</sup> Id.

*Renewal of Certificate of Mark or Brand (Section 21)*

The bill extends the current mark and brand renewal period of five years to every ten years, and removes the required \$5 renewal fee.

*Transfer of Ownership of Cattle (Section 22)*

The bill repeals this entire section of law.

***Assessment; funds; review of accounts; loans (Section 23)***

Present Situation

*Marketing Orders*

Regarding the Department's responsibility to administer agricultural commodity marketing orders for person engaged in the production, distributing, or handling of agricultural commodities within this state, current law requires the director of the Division of Marketing and Development to file with the internal auditor of the Department a certification of conditions and circumstances justifying each contract or agreement entered into without competitive bidding.<sup>75</sup>

Effect of Proposed Changes

The bill specifies that the Division of Fruit and Vegetables, rather than the Division of Marketing and Development, must file with the internal auditor a certification of conditions and circumstances justifying a contract or agreement that was entered into without competitive bidding.

This modification to statute will reflect the actual division that oversees this function due to recent Department restructuring.

***Florida Forest Service Building Structures (Section 24)***

Present Situation

The primary responsibility of the Florida Forest Service (FFS) is the prevention, detection, and suppression of wildfires wherever they may occur.<sup>76</sup> In carrying out these responsibilities, the FFS is authorized to build structures<sup>77</sup> not to exceed a cost of \$50,000 per structure from existing resources on the following properties:

- Forest lands;
- Federal excess property; and
- Unneeded existing structures.<sup>78</sup>

These structures must meet all applicable building codes.<sup>79</sup> In 2011, the Department was granted the exclusive authority to enforce the Florida Building Code as it relates to Department wildfire and law enforcement facilities.<sup>80</sup>

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<sup>75</sup> s. 573.118, F.S.

<sup>76</sup> s. 590.01, F.S.

<sup>77</sup> Notwithstanding ch. 216, F.S., relating to the state agency planning and budgeting process, and ch. 255, F.S., relating to public property and publicly owned buildings.

<sup>78</sup> s. 590.02(4), F.S.

<sup>79</sup> Id.

<sup>80</sup> ch. 2011-206, Laws of Fla.; codified in s. 590.02(4)(b), F.S.

## Effect of Proposed Changes

The bill extends authority to enforce the Florida Building Code as it relates to Department wildfire and law enforcement facilities to also include *other* Florida Forest Service facilities.

According to the Department, this will allow the use of one building permit authority for all Florida Forest Service facilities allowing for more consistency and efficiency during the building permit process while still maintaining the assurance that all construction is designed and constructed in compliance with the Florida Building Code.<sup>81</sup>

## ***Aquaculture Certificate of Registration (Section 25)***

### Present Situation

The Florida Aquaculture Policy Act<sup>82</sup> defines “aquaculture” as the cultivation of aquatic organisms.<sup>83</sup> The act provides that “aquaculture products” are aquatic organisms and any product derived from aquatic organisms that are owned and propagated, grown, or produced under controlled conditions.<sup>84</sup> Such products do not include organisms harvested from the wild for depuration, wet storage, or relay for purification.<sup>85</sup>

Current law requires that any person engaging in aquaculture be certified by the Department.<sup>86</sup> An aquaculture producer certified under this law is authorized to sell aquaculture products (except shellfish, snook, fish of the genus *Micropterus*, and prohibited and restricted freshwater and marine species identified by rules of the Fish and Wildlife Conservation Commission) without restriction so long as the product origin can be identified.<sup>87</sup>

There appears to be confusion as to whether wholesale and/or retail dealers are required to hold an aquaculture certificate of registration in order to sell aquaculture products. It is the Department’s position that an aquaculture certificate of registration is only issued to those who produce (grow) aquaculture products, therefore wholesale and retail dealers would not be required to hold that specific certificate of registration.<sup>88</sup>

### Effect of Proposed Change

The bill deletes the language “*by an aquaculture producer certified pursuant to this section*” and inserts that aquaculture products (except shellfish, snook, fish of the genus *Micropterus*, and prohibited and restricted freshwater and marine species identified by rules of the Fish and Wildlife Conservation Commission) may be sold without restriction “*by a licensed dealer if the*” product origin can be identified.

According to the Department, removing this language in s. 597.004(5)(a), F.S., would remedy the issue surrounding the interpretation of the statute, as this section is solely about the unrestricted sale of identified aquaculture products, not about who can sell these products at wholesale or retail.<sup>89</sup>

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<sup>81</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 10 (Feb. 8, 2017).

<sup>82</sup> ch. 597, F.S.

<sup>83</sup> s. 597.0015(1), F.S.

<sup>84</sup> s. 597.0015(3), F.S.

<sup>85</sup> Id.

<sup>86</sup> s. 597.004(1), F.S.

<sup>87</sup> s. 597.004(5)(a), F.S.

<sup>88</sup> Id.

<sup>89</sup> Id.

## ***Dealers in Agricultural Products (Section 26)***

### **Present Situation**

Current law governing agricultural products dealers defines a “dealer in agricultural products” as “any person, partnership, corporation, or other business entity, whether itinerant or domiciled within this state, engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer’s agent or representative for resale or processing for sale; acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis; or acting as a negotiating broker between the producer or the producer’s agent or representative and the buyer.”<sup>90</sup>

The law finds that producers are subject to the possibility of serious economic harm in the event an agricultural products dealer defaults.<sup>91</sup> Therefore, it is necessary in the interest of the public welfare to regulate agricultural products dealers in this state.<sup>92</sup> The regulations include, but are not limited to, licensing,<sup>93</sup> bonding,<sup>94</sup> and penalties for violations of these requirements.<sup>95</sup> These provisions do not apply to dealers who pay at the time of purchase with United States cash currency or a cash equivalent, such as a money order, cashier’s check, wire transfer, electronic funds transfer, or PIN-based debit transaction.<sup>96</sup>

### **Effect of Proposed Changes**

The bill exempts dealers in agricultural products who pay at the time of purchase with a credit card from certain dealer regulations of the Department.

#### **B. SECTION DIRECTORY:**

- |                  |   |
|------------------|---|
| <b>Section 1</b> | amends s. 288.1175, F.S., related to agriculture education and promotion facilities.  |
| <b>Section 2</b> | amends s. 487.2041, F.S., related to enforcement of federal worker protection regulations.  |
| <b>Section 3</b> | amends s. 493.6101, F.S., related to definitions.   |
| <b>Section 4</b> | amends s. 493.6105, F.S., related to initial application for licensure.   |
| <b>Section 5</b> | amends s. 493.6108, F.S., related to fees.  |
| <b>Section 6</b> | amends s. 493.6108, F.S., related to investigation of applicants by Department of Agriculture and Consumer Services.                                |
| <b>Section 7</b> | amends s. 493.6112, F.S., related to notification to Department of Agriculture and Consumer Services of changes of partner of officer or employees. |
| <b>Section 8</b> | amends s. 493.6113, F.S., related to renewal application for licensure.   |
| <b>Section 9</b> | amends s. 493.6115, F.S., related to weapons and firearms.  |

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<sup>90</sup> s. 604.15(2), F.S.

<sup>91</sup> s. 604.151, F.S.

<sup>92</sup> Id.

<sup>93</sup> s. 604.17, F.S.

<sup>94</sup> s. 604.19, F.S.

<sup>95</sup> s. 604.30, F.S.

<sup>96</sup> s. 604.16(2), F.S.

- Section 10** amends s. 493.118, F.S., related to grounds for disciplinary action.
- Section 11** amends s. 493.6202, F.S., related to fees.
- Section 12** amends s. 493.6203, F.S., related to license requirements.
- Section 13** amends s. 493.6302, F.S., related to fees.
- Section 14** amends s. 493.6303, F.S., related to license requirements.
- Section 15** amends s. 493.6304, F.S., related to security officer school or training facility.
- Section 16** amends s. 493.6402, F.S., related to fees.
- Section 17** amends s. 493.6403, F.S., related to license requirements.
- Section 18** amends s. 501.059, F.S., related to telephone solicitation.
- Section 19** amends s. 507.04, F.S., related to required insurance coverage.
- Section 20** amends s. 534.021, F.S., related to recording of marks and brands.
- Section 21** amends s. 534.041, F.S., related to renewal of certificate of mark or brand.
- Section 22** repeals s. 534.061, F.S., relating to transfer of ownership of cattle.
- Section 23** amends s. 573.118, F.S., related to agricultural commodities assessment; funds; review of accounts.
- Section 24** amends s. 590.02, F.S., related to Florida Forest Service; powers; authority, and duties; building structures.
- Section 25** amends s. 597.004, F.S., related to aquaculture certificate of registration.
- Section 26** amends s. 604.16, F.S., related to agriculture products dealer exceptions.
- Section 27** provides an effective date of July 1, 2017.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

As a result of the bill, the Department estimates the following total average loss in recurring revenues:

	<u><b>(FY 17-18)</b></u>	<u><b>(FY 18-19)</b></u>	<u><b>(FY 19-20)</b></u>
<b>Elimination of Multiple Licenses for Private Investigative Agency Managers</b>	<b>(\$6,562)</b>	<b>(\$6,748)</b>	<b>(\$6,748)</b>
<b>Elimination of Cattle Brand Registration</b>	<b>(\$7,647)</b>	<b>(\$7,647)</b>	<b>(\$7,647)</b>



**Exemption for Agriculture Dealer's Licenses**

\$170 license fee (bonds \$5,000-\$9,999)			
185 exemptions x \$170	(\$31,450)	(\$31,450)	(\$31,450)
\$230 license fee (bonds \$10,000-\$14,999)			
106 exemptions x \$230	(\$24,380)	(\$24,380)	(\$24,380)
\$300 license fee (bonds \$15,000-\$100,000)			
763 exemptions x \$300	(\$228,900)	(\$228,900)	(\$228,900)
Administrative Fines	(\$20,000)	(\$20,000)	(\$20,000)
<b>Total</b>	<b>(\$304,730)</b>	<b>(\$304,730)</b>	<b>(\$304,730)</b>
<b>Total Revenue</b>	<b>(\$318,939)</b>	<b>(\$319,125)</b>	<b>(\$319,125)<sup>97</sup></b>

## 2. Expenditures:

The Department anticipates a reduction in agency expenditures as a result of the bill. These anticipated reductions include:

	<u>(FY 17-18)</u>	<u>(FY 18-19)</u>	<u>(FY 19-20)</u>
<b>Elimination of Multiple Licenses for Private Investigative Agency Managers</b>			
Background Check Expenditures	(\$1,419)	(\$1,605)	(\$1,605)
<b>Exemption for Agriculture Dealer's Licenses</b>			
Salaries and Benefits	(\$191,624)	(\$191,624)	(\$191,624)
Expenses (standard package x 4 FTEs)	(\$24,700)	(\$24,700)	(\$24,700)
HR Services (\$339 x 4 FTEs)	(\$1,356)	(\$1,356)	(\$1,356)
Non-Operating	(\$33,264)	(\$33,279)	(\$33,279)
<b>Total</b>	<b>(\$250,944)</b>	<b>(\$250,959)</b>	<b>(\$250,959)</b>
<b>Total Expenditure</b>	<b>(\$252,363)</b>	<b>(\$252,564)</b>	<b>(\$252,564)<sup>98</sup></b>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

## 1. Revenues:

The bill has no fiscal impact on local government revenues.

## 2. Expenditures:

The bill has no fiscal impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill eliminates the requirement that managers have separate licenses to manage multiple branch offices of private investigative agencies. Each license fee is \$450.

The bill provides that partners and corporate officers who do not possess licenses subject to renewal under s. 493.6113, F.S., are exempt from the fingerprint retention requirements of the statewide automated biometric identification system established in s. 943.05(2)(b), F.S., and the ongoing costs associated with enrolling and retaining their fingerprints in the national retained print arrest notification program required under s. 493.6108, F.S.

The bill removes the \$5 cattle marks and brands renewal fee.

<sup>97</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 12 (Feb. 8, 2017).

<sup>98</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 12-13 (Feb. 8, 2017).

The bill exempts dealers in agricultural products who pay at the time of purchase with a credit card from certain dealer regulations of the Department and associated fees.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**